

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201506560	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/05/2015 11:36 PM	Location of Incident: uptown platform in 1/2/3 subway station on 12th Street and Seventh Avenue	Precinct: 06	18 Mo. SOL 2/5/2017	EO SOL 2/5/2017	
Date/Time CV Reported Wed, 08/05/2015 11:45 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 08/06/2015 11:46 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tongzhong Zhang	12206	954440	TB

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Johnpatric Harrigan	18227	950561	TB

Officer(s)	Allegation	Investigator Recommendation
A.POM Tongzhong Zhang	Discourtesy: PO Tongzhong Zhang spoke discourteously to § 87(2)(b)	
B.POM Tongzhong Zhang	Abuse: PO Tongzhong Zhang threatened to arrest § 87(2)(b)	
C.POM Tongzhong Zhang	Force: PO Tongzhong Zhang used physical force against § 87(2)(b)	

Case Summary

On August 5, 2015, shortly before 11:36 p.m., § 87(2)(b) went under the turnstile to access the uptown platform of the 1, 2 and 3 trains at the subway station on 12th Street and Seventh Avenue in Manhattan. Once he was on the platform, § 87(2)(b) was approached by PO Tongzhong Zhang of the Transit Bureau. PO Zhang was accompanied by three unidentified officers. PO Zhang began to write a summons. PO Zhang asked for § 87(2)(b)'s cell phone number, but § 87(2)(b) refused to provide it. PO Zhang then told § 87(2)(b) "Oh, you're being an asshole" (**Allegation A**). PO Zhang then allegedly told § 87(2)(b) that he would arrest him right then if he did not provide his cell phone number (**Allegation B**). Eventually, PO Zhang then pushed § 87(2)(b) in the chest, so that his back hit the gate (**Allegation C**). PO Zhang then issued § 87(2)(b) a summons for theft of service, and ejected him from the station (Board Review 09). When PO Zhang escorted § 87(2)(b) out of the station, he told him, "Don't ever come to my fucking station again, or I'm gonna arrest you" (**Allegation A cont'd and Allegation D**). § 87(2)(b) then left the station.

Although video footage of the pertinent subway station on the incident date was obtained from the MTA, it did not capture any of the incident.

Mediation, Civil and Criminal Histories

- On August 11, 2015, § 87(2)(b) was offered mediation during his CCRB interview, but he chose to have his complaint investigated.
- As of October 30, 2015, § 87(2)(b) has not filed a notice of claim regarding this incident (Board Review 01).
- On October 29, 2015, a search of the NYPD Booking and Complaint system indicated that § 87(2)(b) has no arrests in the past 10 years.

Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b)'s first with the CCRB (Board Review 05).
- PO Zhang has been a member of the NYPD for two years. He has no substantiated CCRB allegations against him (Board Review 06).

Potential Issues

- PO Zhang did not recall this incident or who he was working with, nor did he note his partner in his memo book. PO John Patric Harrigan was listed as PO Zhang's assigned partner on the pertinent roll call and noted that PO Zhang was his partner in his memo book. However, when he was interviewed, he did not recall this incident or note it in his memo book. § 87(2)(b) described the two additional officers as a white male and an Asian male. There were 13 white males working and 6 Asian males working that tour assigned to TD1, in addition to the other uniformed transit commands who could have been working at the time. § 87(2)(g)

- Although PO Zhang indicated on the summons that he issued § 87(2)(b) that § 87(2)(b) was ejected from the train station, there was no corresponding ejection report completed in regards to the incident.

Findings and Recommendations

Allegation A—Discourtesy: PO Tongzhong Zhang spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) refused to provide his cell phone number when asked.

§ 87(2)(b) stated that when he explained to PO Zhang why he would not provide his cell phone number, PO Zhang told him, “Oh, you’re being an asshole.” § 87(2)(b) further alleged that when PO Zhang ejected him from the station, he told him, “Don’t ever come to my fucking station again, or I’m gonna arrest you.” Although § 87(2)(b) filed this complaint via a DiRad message, so initially did not specify the exact profanity that PO Zhang used toward him, § 87(2)(b)’s statements to the CCRB were consistent that PO Zhang used profanity toward him.

PO Zhang did not recall this incident, but acknowledged that the summons he issued § 87(2)(b) documented that § 87(2)(b) refused to provide his cell phone number and that he was ejected from the station (Board Review 09). During his CCRB interview, PO Zhang explained that respondents were asked for their cell phone numbers upon being issued summonses so that the Transit District could contact them. PO Zhang explained that if a respondent refused to provide his cell phone number, PO Zhang would simply indicate the refusal on the summons, which he did in this case. PO Zhang did not recall specifically why he elected to eject § 87(2)(b) from the station, but said that he did so when someone to whom he issued a summons was intoxicated or “disrespectful.” PO Zhang denied telling § 87(2)(b) “Oh, you’re being an asshole.” PO Zhang explained that in general, upon ejecting someone from the train station, he issued a warning to the individual that if that if he returned to the station, he would be arrested. PO Zhang did not recall whether he told § 87(2)(b) “Don’t ever come to my fucking station again, or I’ll arrest you,” or used any profanity during the incident.

PO Harrigan did not recall this incident. As noted in Potential Issues, the other officers present remain unidentified.

§ 87(2)(g)

Patrol Guide Procedure 203-09 mandates that a police officer must be courteous and respectful when interacting with the public (Board Review 07). The use of profanity by an officer may be permissible if it is used to gain a civilian’s cooperation, but it constitutes misconduct if it is an expression of angry retaliation, even if it is provoked by the civilian’s own belligerence or obscene remarks, as it is likely to incite anger rather than facilitate cooperation. *NYPD V. Jean-Mary*, OATH Index No. 129/01 (Board Review 08).

§ 87(2)(g)

Allegation B—Abuse of Authority: PO Tongzhong Zhang threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that when he refused to provide his cell phone number to PO Zhang, PO Zhang told him that he would arrest him right then if he did not provide his cell phone number. § 87(2)(b) further alleged that after PO Zhang issued him the summons, he told § 87(2)(b) “Don’t ever come to my fucking station again, or I’m gonna arrest you.”

PO Zhang stated that if an individual refused to provide his cell phone number, PO Zhang simply indicated so on the pertinent summons, and PO Zhang had done so on the summons he issued § 87(2)(b). PO Zhang believed that he probably told § 87(2)(b) that he could be arrested for trespassing if he came back to the station after being ejected because he usually warned those ejected from the station in this manner. However, PO Zhang did not recall threatening to arrest § 87(2)(b) during their interaction.

If someone is not compliant with a subway ejection, an arrest may be appropriate (Board Review 10 PG 212-20 Ejection from New York City Transit Property). § 87(2)(g)

Allegation C—Force: PO Tongzhong Zhang used physical force against § 87(2)(b)

§ 87(2)(b) stated that he believed the officers “anticipated that he would pose resistance” and he “prepared to respond accordingly” although he denied offering resistance. He stated that when he was explaining to PO Zhang that he was speaking to him “intelligently” that PO Zhang pushed him in the chest against the gate. § 87(2)(b) also acknowledged that at this point, because a train was arriving in the station, he had raised his voice to be heard over the train. § 87(2)(b) stated that the push caused his back to hit the gate behind him. § 87(2)(b)’s left elbow hit the button prompting a call for assistance. § 87(2)(b) reported that he sustained a bruise on his left elbow, and his loss of balance after being pushed aggravated a previous injury to his ankle. PO Zhang did not recall pushing § 87(2)(b). As discussed above, PO Zhang testified that although he did not recall what § 87(2)(b) had done to prompt PO Zhang to eject him from the station, PO Zhang only ejected people from the station if they had behaved in a disrespectful or disorderly manner.

When § 87(2)(b) went to § 87(2)(b) on August 10, 2015, for a follow-up appointment for the fracture he received prior to this incident, he was not documented as making any mention of this incident (see blue Medical Records file).

In the absence of a subway ejection report, there is no detailed account of § 87(2)(b)'s behavior prompting his ejection from the subway. However, PO Zhang testified that he did not categorically eject from the station each person to whom he issued a summons. Instead, he only ejected those who exhibited disorderly or disrespectful behavior. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date